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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 330

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. RECONSTRUCTION FINANCE CORPORATION, ETC., AND 210 OTHER RELATORS,

Plaintiffs-Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, NELS H. OLSON, F. P. SIEBEL, SR., MRS. L. ROBERT MELLIN, MRS. W. F. HEINEMAN, WILSON FRANKLAND, SAMUEL LEVIN, JOSEPH W. CREMIN, WALTER TRUC, AND B. L. MAJEWSKI, AS MEMBERS, AND JAMES B. McCAHEY, AS MEMBER AND PRESIDENT,

Defendants-Respondents.

REPLY OF PETITIONERS TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF CERTIORARI.

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Summary of reply to respondents' argument.

Respondents do not challenge that substantial federal questions were presented by petitioners and not decided by the Supreme Court of Illinois, but rest their answer on the ground that the Illinois Supreme Court properly based its decision on non federal grounds. Therefore, the only issues presented are (a) whether the non-federal grounds of decision are tenable and substantial, and (b) whether the rights of petitioners and the merits of this case can be adjudicated finally without a decision of the federal questions admittedly plainly presented to the Court by petitioners..... 5-6

If either of these alternatives is answered in the negative then it is clear petitioners have been deprived of a decision of their claims of federal rights. These petitioners are entitled to have their constitutional rights judicially declared and to the judgment of this Court on the question whether federal rights claimed by them in the State Court were denied or not given due recognition 5-6

Lawrence v. State Tax Comm., 286 U. S. 276, 282.
Ward v. Love County, 253 U. S. 17, 22.
Rogers v. Alabama, 192 U. S. 226, 230.

The merits of petitioners' claims against the Board of Education were finally adjudicated and conclusively settled by the decrees in the accounting suits, and neither the Supreme Court of Illinois nor any other court has jurisdiction or power to inquire into the claims or re-examine the decrees upon any ground other than lack of jurisdiction of the courts which entered the decrees.....
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Cooper v. Reynolds, 77 U. S. 308, 316.
Fauntleroy v. Lum, 210 U. S. 230, 237.
Milliken v. Meyer, 311 U. S. 457, 462.
Louisiana v. St. Martin's Parish, 111 U. S. 716, 721.

The decrees adjudicated the private property rights of petitioners under the Constitution and are binding obligations of the Board of Education. Upon entry they became private property of petitioners protected by the Constitution. To destroy the decrees by refusing to petitioners the right to require their payment by any means afforded under the law for payment of judgments against the Board is to destroy the decrees and to take the property of these petitioners without due process of law 21-25, 33

Lincoln County Court v. United States, 105 U. S. 739.
Collins v. Welsh, 75 Fed. (2d) 894, 897.
Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U. S. 421, 431.

The rule prohibiting inquiry into the merits of their decrees was one of the attributes of each of the decrees which petitioners asserted could not be impaired in the face of the protection of their property rights afforded them under the Constitution of the United States. The Supreme Court could not properly disregard this attribute of the decrees and proceed in the face thereof to inquire into the merits of the decrees without deciding the question whether such action on its part would contravene the constitutional rights of petitioners 22

When the Supreme Court of Illinois and respondents attempt to go behind the decrees held by petitioners and relitigate the issues already adjudicated and rest the denial of the writ of mandamus on the invalidity of the original claims, they do not escape the claims of rights of petitioners under the Federal Constitution. The rights of petitioners under the Constitution of the United States were inherent in the claims adjudicated by the decrees and are inherent in the question whether the decrees may be re-examined or their enforcement refused. And even if the Supreme Court of Illinois had the power to go behind the decrees or if the case had been before that Court on appeal from the decrees the case could not have been decided without deciding the constitutional questions 7-8, 11, 20-25

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Even if the question of the nature and merits of the original claims were open for consideration it appears that the grounds of decision of those claims advanced by the Court are not only untenable but are not of such character as made a decision of the federal questions unnecessary. In fact, the grounds of decision injected additional federal questions into the case to the extent that the Court stated the original claims to be something other than they actually were and as they were stated in the complaints in the accounting proceedings 9-11, 13

(1) The original claims were not based upon tax warrants nor upon breach of trust by officers of a quasi-municipal corporation. They were for money had and received by the Board to the use of petitioners.....9-11, 13-19

(2) Even if the claims had been based on breach of trust or other wrongdoing by agents of a quasi-municipal corporation, such fact would not have militated against the claims. The protection afforded a citizen by the Constitution against seizure of or interference with his property on the part of the State, applies to all types of State agencies and to all acts of interference, be they described as tortious, or abuses of power, or breaches of trust 13-19

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(4) Ward v. Love County, 253 U. S. 17, 24, bears directly upon both the merits of the original claims as well as upon the rights

under the Constitution plainly asserted by petitioners to be inherent in those claims. That case involved the question of the liability of a quasi-corporation for money had and received where tax money, which was the property of plaintiffs, was wrongfully extracted from such plaintiffs by the corporation's officers, was received into the corporation's treasury, and thereafter paid by the corporation's officers to others than the plaintiffs whose money it was. This Court held the quasi-municipal corporation liable...10, 15, 45

(5) Even if the defense of non-liability of a municipal corporation on Illinois tax warrants or the defense of non-liability of a quasi-corporation for negligent acts or breach of trust by its officers had been available as defenses before the decrees were entered, they certainly cannot be said to be available after those decrees have been entered, particularly in a collateral suit brought to enforce such decrees 12, 17

Nowhere, either in the court's opinion or in respondents' answer, is it even intimated that the courts which entered the decrees were without jurisdiction or power to adjudicate the claims asserted in the accounting suits. The Supreme Court of Illinois re-examined the decrees for alleged errors of law despite the well settled axiom of the law which denies such judicial power to the Supreme Court of Illinois or any other court. In so doing the Court usurped judicial power and deprived petitioners of their property without due process of law.....18, 21, 22, 37

The Supreme Court of Illinois did not mention any of its many decisions called to its attention in the briefs of petitioners holding that a judgment, whether against a municipal corporation or a private individual, may not be reexamined by any court in a collateral proceeding upon any ground other than want of jurisdiction on the part of the court which entered the judgment. Nor did it mention the many cases in which it had held municipal corporations of all types liable for money had and received under circumstances substantially identical with those at bar. The Court

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In any event this ground of decision is untenable. None of the authorities cited in the opinion of the Supreme Court of Illinois, and in respondents' answer, support the asserted right of the Court to go behind the decrees and inquire into the validity of the claims adjudicated by such decrees. The fact is the cases cited in the opinion of the Supreme Court of Illinois and in respondents' answer are authorities holding to the contrary of that proposition. They serve conclusively to demonstrate that the non-federal grounds of decision advanced by the Supreme Court of Illinois are wholly untenable, illusory and unsubstantial 26-45

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Plaintiffs-Petitioners,

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BOARD OF EDUCATION OF THE CITY OF CHICAGO, NELS H. OLSON, F. P. SIEBEL, SR., MRS. L. ROBERT MELLIN, MRS. W. F. HEINEMAN, WILSON FRANKLAND, SAMUEL LEVIN, JOSEPH W. CREMIN, WALTER TRUC, AND B. L. MAJEWSKI, AS MEMBERS, AND JAMES B. McCAHEY, AS MEMBER AND PRESIDENT,

Defendants-Respondents.

REPLY OF PETITIONERS TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF CERTIORARI.

Petitioners, People of the State of Illinois, on the relation of Reconstruction Finance Corporation and 210 other holders of judgments against Board of Education of the City of Chicago respectfully submit to this Court their reply to the answer of respondents.

Comments on respondents' restatement of the Case.

Despite the full statement of the case set forth in the supporting brief annexed to the petition, (pp. 20-29,) respondents completely restate the case, offering as an excuse that "some of the facts" were omitted from petitioners' statement of the case. (Ans. p. 4.) Respondents do not point out the facts which they claim were omitted from petitioners' statement. However, aside from assertions of argument and conclusions, for which no record references are supplied, there is but one subject which is alluded to which does not appear in the statement of the case set forth in the petition.

At pages 6 and 7 of their answer respondents, with the obvious view in mind of supporting their later argument (Ans. p. 31-32) that the Board, in disbursing the proceeds of collection of the anticipated taxes, acted in accordance with what respondents claim to have been "a universal custom and practice" of the Board and other municipal corporations in Illinois known to petitioners and other holders and purchasers of and dealers in tax anticipation warrants, state "facts" not supported by the record.

In support of their statement in this regard respondents refer this Court to R. 166-168, 171, 173, 175 and 180 in the companion case, No. 331, *Leviton* v. *Board*. These record references are to offered evidence tendered by respondents in the course of the trial of *Leviton* v. *Board* to support its claim of the existence in Illinios in normal times and under normal circumstances of an alleged custom and practice respecting the payment of tax anticipation warrants. Respondents neglect to call the attention of this Court to the fact that objections to the offer were sustained on the ground, among others, that the offered proof did not show or tend to establish the existence of any such

custom and practice as was claimed by the Board and that thereupon the evidence was excluded. (R. 182-183, *Leviton* v. *Board*, No. 331.) Furthermore, the defense made by the Board, based upon the issue of existence of an alleged custom and practice, was decided against the Board in the accounting suit and is no longer open for consideration. The Supreme Court of Illinois so held on the appeal in *Leviton* v. *Board*. (R. 244 in case No. 331.) What is more, the offered proof showed conclusively that there was no such custom and practice as is asserted by respondents, (R. 169-173, 279-280, *Leviton* v. *Board*, No. 331,) even assuming the alleged custom and practice asserted by respondents was applicable to the unusual and abnormal situation respecting the 1929 tax anticipation warrants of the Board.

At page 32 of their answer respondents assert, without supporting record reference, that "when the petitioners purchased their warrants they knew that practice and custom." Aside from the fact that the evidence offered by the Board in the trial of the companion case of *Leviton* v. *Board* and excluded by the Court established that there was no custom and practice as was asserted, neither the evidence excluded by the Court nor any other evidence established or tended to establish that respondents had any knowledge of the alleged custom and practice asserted or any other custom and practice in respect of payment of tax anticipation warrants.

At page 7 of the answer respondents infer that petitioners and other judgment holders were tardy in asserting their claims against the Board in the first instance, and that the Board was prejudiced thereby. This defense was made by the Board in the original judgment proceedings (R. 78, in *Hutchinson* v. *Board*, No. 332) and was determined against it upon several grounds, some of which this Court will find elaborated upon in the opinion of the

United States District Court in *Norfolk & Western Ry. Co.* v. *Board*, 14 Fed. Supp. 475, affd., 88 Fed. (2d) 462.

At page 7 of their answer respondents refer as part of their statement of the case to *Berman* v. *Board of Education*, 360 Ill. 535, 542, but fail to call the attention of this Court to the fact that in that case the Board of Education (respondent here) was seeking to establish it had constitutional authority to pay *in full* of principal and interest 1929 tax anticipation warrants issued by it, *irrespective of the fact that sufficient tax collections had not and would not be collected to pay such tax warrants.*

We have made specific reference to the so-called additional facts stated in respondents' statement of the case for the reason that we think they have been included therein with the purpose in mind of influencing adversely the view this Court may take of the equities of petitioners' original claims and thereby also influencing adversely the exercise by this Court of its discretion to grant the petition for writ of certiorari in this case.

The natural tendency of petitioners is to elaborate upon the many compelling grounds, both legal and equitable, which influenced the Circuit Court and the Superior Court of Cook County in the accounting proceedings, as well as the United States District Court in a similar proceeding involving the same issues, (*Norfolk & Western Ry. Co.* v. *Board*, 14 Fed. Supp. 475, affd. 88 Fed. (2d) 462,) to reject the foregoing defenses of the Board, but they have resolved not to follow the error of respondents and burden this Court with matters which are outside the issues presented in this case.

Reply to respondents' argument.

Petitioners respectfully submit that respondents' answer serves to point up and emphasize the fact stressed in the petition that there are present in this case and the companion cases (*Leviton* v. *Board*, No. 331, and *Hutchinson* v. *Board*, No. 332) the grounds which this Court has often stated* impel it to exercise its discretion to award its writ of certiorari to bring before it for review the record and judgment of a state court,—namely

(1) titles, rights, privileges and immunities under the Constitution of the United States were plainly asserted and claimed by petitioners in the state courts in apt time and at every available opportunity;

(2) the federal constitutional questions presented and the constitutional rights claimed were substantial;

(3) the claims and assertions of federal constitutional rights made by petitioners were not decided by the state court nor otherwise given due recognition;

(4) the rights of the petitioners could not be determined without a decision of the federal constitutional questions which had been plainly asserted;

(5) the non-federal grounds upon which the State Court placed its decision were not tenable or substantial and were not so independent of the federal questions or otherwise of such character as made the decision of the federal constitutional questions unnecessary; and

(6) petitioners were aggrieved by the disposition of the case made by the State Court.

Respondents do not challenge, and therefore concede, that petitioners in apt time and at every available oppor-

* Pet., pp. 16-18; Brief, pp. 30, 51-52.

tunity plainly asserted their claims under the Constitution of the United States, in the Circuit Court of Cook County and in the Superior Court of Cook County and in the Supreme Court of Illinois, and that the federal questions thereby presented were not decided nor the claims of said rights given due recognition. Their contention that the petition for the writ should be denied rests solely on the argument that the Supreme Court of Illinois decided the case on non-federal grounds adequate to sustain its judgment independent of a decision of the federal questions. Therefore the only issues presented by respondents' answer are (a) whether the non-federal grounds, upon which the Supreme Court of Illinois placed its decision, are tenable and substantial, and (b) whether the rights of petitioners and the merits of this case can be determined and finally adjudicated without decision of the federal constitutional questions which were plainly asserted by petitioners.

If either of these alternatives is answered in the negative then it is clear petitioners have been denied the right to a decision of their claims of federal rights. These petitioners have the right to the judgment of this Court on the question of whether federal rights claimed by them in the State Court were denied or not given due recognition. *Lawrence* v. *State Tax Comm.*, 286 U. S. 276, 282; *Ward* v. *Love County*, 253 U. S. 17, 22; *Rogers* v. *Alabama*, 192 U. S. 226, 230.

We respectfully suggest that the foregoing alternatives in themselves present substantial federal questions and that petitioners are entitled to the judgment of the Court with respect thereto.

I.

(a) The non-federal grounds of decision upon which the Supreme Court of Illinois placed its decision are untenable and unsubstantial.

(b) The rights of petitioners and the merits of this case are such that they cannot be determined and finally adjudicated without a decision of the federal questions plainly asserted by petitioners in the State Court.

The rights under the Constitution of the United States plainly claimed by petitioners in the courts below, the decision of which was required to be made by the Supreme Court of Illinois, are stated at pages 6-9 of the petition, and summarized at index pages i-ii of the petition.

Respondents first undertake to defend the refusal of the Supreme Court of Illinois to pass upon or give due recognition to the rights under the Constitution of the United States, plainly presented in that Court by petitioners, on the false premise used by that Court to evade a decision of these questions,—*i. e.*, that the decrees obtained by petitioners in their accounting suits were based either on the tax anticipation warrants held by them or on a breach of duty by the Board's officers. Ans., p. 15.

Petitioners have shown in their brief attached to the petition (pp. 39-40) that these asserted non-federal grounds are illusory because they had no existence in fact and were contrary to the records in the accounting suits and we show in this reply under the following sub-headings that the grounds are untenable if they had been in the case.

The Supreme Court of Illinois, and the respondents, in attempting to defend its judgment, go behind the decrees in the accounting suits and inquire into the validity of

petitioners' claims against the Board which were adjudicated by said decrees. To say the original claims of petitioners were not valid begs the question whether the Court had power and jurisdiction, as against assertions by petitioners of rights in their decretal judgments under the Constitution of the United States, to re-examine the claims in the face of a judgment which had conclusively adjudicated them against the Board.

But the Supreme Court of Illinois having gone behind the judgments and the respondents now defending that action of the Court upon the same grounds which the Court advanced in its opinion, the question arises whether the non-federal grounds of decision upon which the Court held the claims to be invalid are sufficiently tenable and substantial and independent to render unnecessary a decision of the federal questions presented by the claims themselves, *assuming those claims had been before that court in the first instance on direct appeal.*

If either of these issues on the merits of the claims which were determined in the accounting suits is answered in the negative, then petitioners' right to writ of certiorari is clear.

We believe that neither of these questions was in issue in the Supreme Court of Illinois since their consideration was concluded by the judgments, but since they are advanced by respondents as grounds making against the jurisdiction of this Court, we are compelled to point out wherein they are without merit.

A.

Aside from the question of the conclusiveness of the decretal judgments, the grounds of decision, as applied to the claims adjudicated by the judgments are neither tenable nor of such character as would have rendered a decision of the federal questions unnecessary had the claims been open for examination.

(1) *The original claims were not based on tax warrants. They were for money had and received. The question whether petitioners had been deprived of their property without due process of law was a question inherent in such claims.*

The pleadings in the accounting suits and the decrees entered conclusively show that the decrees were not based on the tax anticipation warrants as contracts creating a general obligation of the Board, but rather were based upon the liability of the Board to account to petitioners for moneys assigned to and owned by them and received by the Board into its treasury to the use of petitioners. R. 23-36, in *People* v. *Board;* and R. 1-133 (pleadings) and R. 133-176 (decree) in *Hutchinson* v. *Board*, No. 332.

These petitioners have never contended that the tax anticipation warrants held by them created a general obligation of the Board. (Pet., pp. 39-40.) Their claim made in their accounting suits was for moneys admittedly assigned to them by the Board and pledged to the payment of their warrants which the Board received into its treasury for their use and which it did not pay over to them as their respective interests required the Board to do. (R. 1-41 (complaint), *Hutchinson* v. *Board*, No. 332.) The decree entered in the accounting suits required the Board to account for such of these moneys as were actually received

into the Board's treasury to the use of petitioners, and nothing more. R. 23-36, *People* v. *Board*, and R. 133-176, *Hutchinson* v. *Board*, No. 332.

These moneys belonged to the petitioners as warrant holders when they were received by the Board of Education from the County Collector pursuant to Section 243 of the Revenue Act of Illinois (Smith-Hurd's Ill. Stat., 1929, ch. 120, par. 228) and the Board had no proprietary interest in them. They were property protected by the Constitution of the United States. Under the established law of Illinois, having actually received these moneys into its treasury and having subjected them to its control under sections 132 and 135 of the School Act (Appendix to Pet., pp. 29, 30) the Board was under duty to pay over these moneys to the true owners as their respective interests appeared, and when it failed in this duty the Circuit Court and the Superior Court of Cook County properly entered money decrees in the accounting suits brought against the Board by these petitioners. *Trustees of Schools* v. *Trustees of Schools*, 81 Ill. 470, 473; *Highway Commissioners* v. *City of Bloomington*, 253 Ill. 164, 175; *Rothschild* v. *Village of Calumet Park*, 350 Ill. 330, 339-342. This is the universal rule. *Ward* v. *Love County*, 253 U. S. 17, 22, 24; *Chapman* v. *County of Douglas*, 107 U. S. 348, 355; *Bank of Burlington* v. *City of Murphysboro* (C. C. A., 7), 96 Fed. (2d) 899, 903; *Getz* v. *City of Harvey* (C. C. A., 7), 118 Fed. (2d) 817, 824; *Strough* v. *Jefferson County*, 119 N. Y. 212, 23 N. E. 552; *Center School Township* v. *School Commissioners*, 150 Ind. 168, 49 N. E. 961.

The tax warrants held by petitioners were mere muniments showing the title of petitioners to a share of the moneys, and the decree in favor of each petitioner was for his pro rata share of the moneys received by the Board to

his use, plus statutory interest for the period these moneys had been withheld.

Whether the Board was under duty to receive the moneys from the County Collector is immaterial. It did receive the moneys, the moneys belonged to the petitioners and to no one else, the Board did not pay petitioners their moneys, and the money decrees merely required the Board to perform its legal duty under the law of Illinois and the Constitution of the United States.

For the same reasons, the question whether the Board was under a duty prior to the receipt by it into its treasury of the anticipated taxes to see that such taxes were paid to petitioners when collected by the County Collector is equally immaterial. The admitted fact is that the Board of Education did not stand on its right, if it had such right, to decline to take any part whatsoever in the matter of the payment over to petitioners of the moneys belonging to them upon their collection by the County Collector. Instead, it received these funds into its treasury and made them subject to its order, and its order alone, by virtue of the provisions of Section 135 of the School Act. (Appendix to Pet., p. 30.) Thereafter it disbursed those funds by way of exercise of the exclusive power and control vested in it by said statute to pay out any and all funds in its treasury. By so doing it deprived these petitioners of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

We respectfully submit that the first ground of decision respecting the merits of the claims, assuming they were now open to examination, is not only wholly untenable and inadequate, but is not of such character as rendered unnecessary the decision of the federal questions inherent in the claims themselves.

In any event, this phase of the merits of the claim was conclusively settled in favor of these petitioners and against the Board by the decrees in the accounting suits and no respectable authority holds that the issues settled by the decrees can be re-examined in this collateral proceeding. Certainly none of the authorities relied upon by respondents in their petition nor any of the authorities cited by the Supreme Court of Illinois in its opinion in any way tend to support this proposition. The only case relied upon which even comes close to supporting respondents' contention that a court in a mandamus proceeding brought to enforce a judgment may re-examine the questions settled in the judgment proceeding is *Brunson* v. *Caskie*, 127 Ga. 501, 56 S. E. 621. Aside from the several grounds upon which this case is distinguished later in this reply*, the decision in the Georgia case is squarely contrary to the decisions of the Supreme Court of Illinois in *People* v. *L. & N. R. Co.*, 350 Ill. 274, 277, 183 N. E. 233, 235; *Moore* v. *Town of Browning*, 373 Ill. 583, 585, 586, 588, 27 N. E. (2d) 533, 535, 536; *Carney* v. *Village of Marseilles*, 136 Ill. 401, 407, 26 N. E. 491, 493; and *Marabia* v. *Thompson Hospital*, 309 Ill. 147, 157, 140 N. E. 836, and to the decision of the Appellate Court of Illinois in *Seither & Cherry Co.* v. *Board of Education*, 283 Ill. App. 392, 403. This was called to the attention of the Supreme Court of Illinois not only in the petition for rehearing (R. 85-86) but also in petitioners' briefs on the merits, copies of which have been certified to this Court. None of these decisions is mentioned or cited in the opinion of the Supreme Court of Illinois. In the face of these cases the decision of the Court is untenable. No recognition was given by that Court to the claim that in failing to apply or even mention these decisions the Court was denying to these petitioners the redress afforded other litigants under substantially

*Pages 42 to 44.

identical circumstances, and thereby denied to petitioners the equal protection of the law.

(2) *The protection afforded a citizen by the Constitution of the United States against seizure of or interference with his property on the part of the State, applies to all types of State agencies and to all acts of interference, be they described as tortious or as breaches of trust, or otherwise.*

Respondents contend (Ans. p. 17), the holding of the Supreme Court of Illinois that the claims were not corporate obligations of the Board of Education because the Board of Education, being a quasi municipal corporation, is not liable for breaches of trust by its officers or for torts committed by its officers or agents, is an adequate and tenable non-federal ground of decision of the issues raised in the case at bar and is such an independent ground of decision as rendered unnecessary the decision of the federal questions raised on the record.

The pleadings in the accounting suits and the decrees entered show that the decrees were not based on a breach of duty of the Board's officers, (R. 1-41 (complaint) and R. 133-176 (decree) in *Hutchinson* v. *Board*, No. 332.) but if they had been, the asserted ground of decision is neither tenable nor independent of the federal questions inherent in the claims. The obligation imposed by the Constitution of the United States upon a State or any agency of a State to compensate its citizens for property of such citizens taken by the State or its agency does not depend upon the nature of the agency as a municipal corporation proper or as a quasi municipal corporation, nor does it depend upon whether the acts by which the property was taken were or were not tortious in character. *Scott* v. *McNeal*, 154 U. S. 34, 45; *C. B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226, 233.

This Court said in the latter case (166 U. S. 233), "that the prohibitions of the [Fourteenth] amendment refer to *all* the instrumentalities of the States." In *Scott* v. *McNeal*, 154 U. S. 34, 45, this Court said: "The Fourteenth Article of Amendment of the Constitution of the United States, * * *, ordains, 'nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to *all* acts of the State, whether through its legislative, its executive, or its judicial authorities. And the first one, as said by Chief Justice Waite in *United States* v. *Cruikshank*, 92 U. S. 542, 554, repeating the words of Mr. Justice Johnson in *Bank of Columbia* v. *Okely*, 4 Wheat. 235, 244, was intended 'to secure the individual *from the arbitrary exercise of the powers of government*, unrestrained by the established principles of private rights and distributive justice.'" [Emphasis ours.] In the subsequent case of *C. B. & Q. R. R.* v. *Chicago*, 166 U. S. 226, 239, this Court said "that the prohibitions of the [Fourteenth] Amendment refer to *all* instrumentalities of the State." This Court there pointed out that the Fourteenth Amendment protects the property of citizens from *any* interference or appropriation by the State or *any* of its agencies, whether done in pursuance of a state constitutional provision or a legislative enactment or whether done by the State itself or by one of the subordinate agencies of the State, be it denominated a municipal corporation proper or a quasi municipal corporation, and whether done directly by taking the property of one person and vesting it in another or in the public, or indirectly through abuse of law.

It has been frequently held by this Court that the prohibition of the Fourteenth Amendment against the seizure of or interference with private property by the state or any

of its agencies applies as well where the seizure or interference is the result of a misuse or abuse of power as where it is the result of the regular exercise of power. *Home Tel. & Tel. Co.* v. *Los Angeles*, 227 U. S. 278, 287; *Raymond* v. *Traction Co.*, 207 U. S. 20, 35.

In *Ward* v. *Love County*, 253 U. S. 17, 24, this Court held that the quasi municipal corporation which was the party defendant in that case, was obligated by virtue of the Constitution of the United States to account to the plaintiffs for tax moneys which it wrongfully collected from plaintiffs and thereafter wrongfully disbursed to others. This Court held that although the action of the county officials acting on behalf of the quasi municipality was wrongful and tortious, the tax moneys collected were moneys received by the county to the use of plaintiffs and that the county could not lessen its liability to account by showing that it had paid over to others a portion of such moneys which belonged to plaintiffs. The rule that a quasi municipal corporation is liable for property had and received by it to the use of another, irrespective of the circumstances under which the property is obtained by it, obtains in Illinois. *Trustees of Schools* v. *Trustees of Schools*, 81 Ill. 470, 373; *Highway Commissioners* v. *City of Bloomington*, 253 Ill. 164, 175; *Sangamon County* v. *City of Springfield*, 63 Ill. 66, 71.

It is pertinent to observe that it was not necessary to the maintenance of the accounting suits that either the Board of Education or its officers should have been guilty of either wrong or negligence. Since it is no defense to an action against a quasi municipal corporation, brought by the owner of property or money received by such corporation to its use, that the property or money was delivered or paid by such corporation to others than the owners thereof, (*Ward* v. *Love County*, 253 U. S. 17, 24) then it is

immaterial whether the corporation or its officers breached a trust or committed a negligent or tortious act in disposing of such property to others than its owners.

Such cases as *Elmore* v. *Drainage Com'rs.*, 135 Ill. 269, 25 N. E. 1010, *Kinnare* v. *City of Chicago*, 171 Ill. 332, 49 N. E. 536, *Bradbury* v. *Vandalia Drainage Dist.*, 236 Ill. 36, 86 N. E. 163, *Melin* v. *School District*, 312 Ill. 376, 144 N. E. 13, *Roumbos* v. *City of Chicago*, 332 Ill. 70, 163 N. E. 361, cited at page 17 of respondents' answer, all of which involved trespass on the case for damages, have no application to a suit for accounting in the nature of an action for money had and received. Cases involving actions *ex delicto* are not in point as to liability of a quasi municipal corporation in actions *ex contractu*. Furthermore, *Bradbury* v. *Vandalia Drainage Dist.*, 236 Ill. 36, 86 N. E. 163, does not support the proposition advanced by respondents that a quasi-municipal corporation is never liable for failure of its officers to do their duty. That case involved a drainage district, which is at the bottom strata of the hierarchy of municipal corporations. It erected a levee which so dammed a stream that plaintiff's land was subjected to damages by overflow. Plaintiff sued the drainage district for damages in an action of trespass on the case. The Supreme Court of Illinois held the district accountable. The Court itself criticized its decision in the *Elmore* case (which case is cited and quoted at pages 17-18 of respondents' answer) in generalizing on the non-liability of quasi municipal corporations for wrongs committed by its officers. The portion of the opinion in the *Elmore* case quoted in respondents' answer, when viewed in the light of the criticism of that decision in the later case of *Bradbury* v. *Vandalia Drainage Dist.*, is without force, not to mention the fact that the holding in the *Elmore* case has no application here in any event.

This issue was one of the issues determined by the Circuit Court and by the Superior Court of Cook County in the accounting suits and is concluded by the decrees entered in those cases. Even assuming the decrees were made subject to inquiry when petitioners sought to invoke the processes of the courts for the enforcement of their judgments, it is obvious that the court could not dispose of the question of the validity of the claim without deciding the claims of federal constitutional rights of petitioners which were inherent in the claims themselves and upon which the claims were in part bottomed. Therefore it necessarily follows that the decision of the Supreme Court of Illinois, that the claims upon which the judgments were based were not corporate obligations of the Board under the Illinois Constitution because (as asserted by the Court) they were based on breaches of trust by officers of a quasi-municipality, did not dispose of the essential federal question inherent in the cases as to whether or not the claim was a corporate obligation of the Board under the Constitution of the United States, *irrespective of any alleged limitations of state law.*

Even if the defense of non-liability of a quasi municipal corporation for negligent acts or breach of trust by its officers had been available as a defense before the decrees were entered in the accounting suits, it certainly cannot be said to be available after those decrees have been entered, particularly in a collateral suit brought to enforce such decrees. *Carneu* v. *Village of Marsailles*, 136 Ill. 401, 407, 26 N. E. 491, 493; *Moore* v. *Town of Browning*, 373 Ill. 583, 585, 588, 27 N. E. (2d) 533, 535, 536; *Marabia* v. *Thompson Hospital*, 309 Ill. 147, 140 N. E. 836.

In the *Marabia* case a default judgment had been entered against the defendant hospital, a charitable institution, in a tort action for damages for personal injuries

suffered by plaintiff as the result of the negligent acts of one of the defendant's agents, and, after the expiration of the term of court at which the judgment was entered, the hospital moved to vacate the judgment on the grounds *inter alia,* (309 Ill. 150-151) that the hospital was a charitable corporation and under the well settled law of Illinois could not be made liable for tort based upon the negligent acts of one of its agents and that the judgment was void and could not be enforced against it. The Supreme Court of Illinois, while conceding the fact of the nonliability of the defendant upon the claim adjudicated against it by the judgment, held (309 Ill. 157) that the judgment conclusively settled the liability of the hospital; that the claim upon which the judgment was based could not be inquired into in a collateral proceeding brought to enforce such judgment; and that the judgment was not void because "The court does not lose jurisdiction because the plaintiff has not stated a good cause of action"; and that "Whether the question of the defendant in error's liability is settled by the decisions of this court or not, that question does not go to the jurisdiction of the Circuit Court." In a later case (*Seither & Cherry Co.* v. *Board of Education*, 283 Ill. App. 392, 403, 404) the Appellate Court of Illinois, following the *Marabia* case and other like decisions of the Supreme Court of Illinois, held that a judgment against a Board of Education could not be attacked by such quasi municipal corporation in a subsequent suit on the ground that the claim which the judgment adjudicated was admittedly void because attempted to be incurred by the Board after it had reached its Illinois constitutional debt limit.

Each of these cases was called to the attention of the Supreme Court of Illinois in the briefs of these petitioners, copies of which have been certified to this Court (see appel-

lants' reply brief, pp. 15-16) but no mention of them is made in the opinion of the Supreme Court of Illinois. Instead it advances a new, fallacious and wholly untenable theory of its own, not advanced by either party, nor discussed in any of the briefs, never before heard of in Illinois jurisprudence, and at variance with all the previous decisions of the Court, none of which are mentioned in the opinion and as to all of which it maintained absolute silence in the face of vigorous protest by these petitioners.

Aside from the fact that the authorities above discussed establish that the ground of decision of non-liability for tort is untenable as applied to petitioners' claims, and does not render unnecessary a decision of the federal questions inherent in the claims, assuming the claims were open for examination, the failure and arbitrary refusal of the Court to apply the well settled law denied to petitioners the redress afforded other litigants under substantially identical circumstances and thereby denied to petitioners the equal protection of the law.

B.

The mere assertion of the Supreme Court of Illinois that it had power to inquire into whether or not the claims adjudicated were corporate obligations of the Board and to grant or deny enforcement of the judgments depending upon its decision of that question, is not an adequate non-federal ground of decision which rendered it unnecessary to pass upon the federal questions presented.

We turn now to a discussion of the contentions of respondents respecting the holding of the Supreme Court of Illinois that it has power in a mandamus proceeding brought to enforce a judgment or decree against a municipal corporation entered by a court of general jurisdic-

tion to inquire into the matter of the validity of the claim adjudicated and to grant or withhold judicial process for enforcing the judgment, depending upon the court's view of the validity of the claim adjudicated.

The premise advanced by the Court in its opinion, and now sought to be maintained by respondents, is that the judgments are not corporate obligations if the claims adjudicated by the judgments were not corporate obligations, and this being so, the claims may be inquired into.

It is not denied by respondents in their answer, nor by the Supreme Court of Illinois in its opinion, that the Circuit Court and the Superior Court of Cook County are courts of general jurisdiction and that they had jurisdiction of the accounting suits and the power to decide the issue of the corporate liability of the Board of Education with respect to the claims asserted by petitioners, nor is it anywhere denied by respondents or by the Supreme Court of Illinois that the Circuit Court and the Superior Court of Cook County actually determined such issues against the Board in the several accounting suits. Nor did the Court declare the judgments invalid as respondents asked. It declined to pass upon that question.

It appears to be admitted by respondents, as it must be, that judgments and decrees, as such, against Illinois public corporations are corporate obligations within the Constitution of Illinois and that there is no escape from making provision for discharging the judgment obligation. (Authorities, Pet., p. 32.) But it is asserted that the decrees in the case at bar differ from other decrees in that it appears from the face of the decrees that the claims which the Circuit Court and the Superior Court of Cook County had jurisdiction and power to and did adjudicate against the Board are claims which were not corporate obligations of the Board under the Illinois Constitution. The propo-

sition is advanced that in a proceeding for a writ of mandamus to enforce a decree against an Illinois public corporation entered by a court of general jurisdiction the court may inquire into the merits of the claim upon which the decree is based to determine for itself, irrespective of the adjudication by the court which entered the decree, whether the claim is based upon a corporate obligation of the public corporation. (Pet., pp. 13-15.)

It is said that this inquiry is not a collateral attack upon the decree, nor is it an inquiry into the question of the validity of the decree. What this argument amounts to is that a court may, in a case in which mandamus is sought to enforce a judgment against a municipal corporation, ignore and disregard the judgment, ignore and disregard the fact that the court which entered the judgment had jurisdiction and power to enter it, and treat the case as though no judgment had been entered. Apparently it is intended that this is to be a special rule for the benefit of municipalities alone, for, as we have pointed out,* the Supreme Court rejected the same contention when made with respect to other litigants, (*Marabia* v. *Thompson Hospital*, 309 Ill. 147, 140 N. E. 836,) a fact ignored by the Court in its opinion in this case. These contentions, advanced by respondents and by the Court, are elaborated upon at pages 19 to 28 of the answer. They beg the very questions at issue in this case, *i. e.*, are the final money decrees held by petitioners, (having been entered by courts of competent jurisdiction,) property within the protection of the Fourteenth Amendment of the Constitution of the United States, and may the private property rights of these petitioners in their money decrees be destroyed by refusing to them the remedy heretofore given to all judgment holders against municipal corporation for the enforcement of judgments

* This reply, pp. 18-19.

against such corporation, in the absence of a finding that the judgments are void because the court which entered the judgments was without jurisdiction or power to enter them?

We hasten to add that the Supreme Court of Illinois could not decide the case before it, even assuming it had the right to inquire into the validity of the claims adjudicated by the decrees, without determining, upon making inquiry into the adjudicated claims, the rights under the Constitution of the United States plainly asserted by petitioners to be inherent in the claims adjudicated against the Board and inherent also in the judgments themselves.

Furthermore, the Supreme Court of Illinois could not decide the case before it without determining the question of whether a refusal to enforce the decrees, whatever the non-federal grounds advanced might be, would destroy the judgments and thereby deprive petitioners of vested rights under the Constitution of the United States plainly asserted by them.

The claims under the Constitution of the United States made by petitioners (Pet., pp. 32-36) are such that, even if the case had come before the Supreme Court of Illinois on an appeal on direct review of the decrees rather than by way of this collateral proceeding, that Court could not have determined the issues on the appeal without determining whether or not refusal of the court to sustain the claims as obligations of the Board would permit the Board of Education to take the property of petitioners and deprive petitioners of their property without due process of law in violation of the Constitution of the United States. Consequently, when respondents adopt in their answer the position advanced by the Supreme Court of Illinois in its opinion,—that the only issue is whether the claims on which the judgments were based were corporate

obligations under the Illinois Constitution,—they beg the real questions involved and overlook the fact that another issue to be determined is whether or not, irrespective of the Illinois Constitution, rights, titles and privileges of petitioners under the Constitution of the United States would have been denied to petitioners had the decrees not been entered in the first instance and would be denied to petitioners by failure to enforce the decrees when entered.

Petitioners also asserted in the State Court that, irrespective of the reason advanced, neither the Supreme Court of Illinois nor any other court had judicial power or authority, in the face of petitioners' constitutional rights, to inquire into the validity of the claims upon which the decrees were based. (Pet., pp. 36-38.) In *Cooper* v. *Reynolds*, 77 U. S. 308, 310 this court said that the rule that a final decree or judgment entered by a court of competent jurisdiction is not subject to re-examination for mistake of law "has often been held by this court, and by all courts, *and it takes rank as an axiom of the law.*" (Emphasis added.) The Supreme Court of Illinois proceeded to make such an inquiry without passing upon the claim of petitioners that such action on its part was a usurpation of judicial authority and resulted in depriving petitioners of their rights under the Constitution.

Petitioners also asserted that the Supreme Court of Illinois in examining into the basis of the decrees stated and decided a case which was not presented by the record or by the briefs of the parties and in so doing denied to petitioners due process of law guaranteed by the Constitution of the United States. (Pet., pp. 39-40.) Obviously, a decision of this claim of federal constitutional right could not properly be avoided by the Supreme Court of Illinois without depriving petitioners of their Constitutional right to have that question adjudicated. However, the Court failed to pass upon that question.

The petitioners asserted in the State Court that to hold their rights were adjudicated by the judgments of the Supreme Court of Illinois in the *Leviton* v. *Board of Education* cases (374 Ill. 594, 30 N. E. (2d) 497; 385 Ill. 599, 53 N. E. (2d) 596), to neither of which any of the petitioners were parties, and in which the interests of the actual parties thereto were adverse to petitioners, would be to deny petitioners the due process of law guaranteed them by the Constitution of the United States. (Pet., pp. 7-8.) Despite this claim of federal right by petitioners the Court proceeded to apply its decisions in the *Leviton* cases as adjudications of the rights of petitioners.* The mere assertion of the Court that it had power under State law to inquire into the claims adjudicated against the Board cannot be said to render unnecessary a decision of this particular federal question.

The Supreme Court of Illinois could not decide the case before it without determining these and other claims of rights plainly asserted by petitioners under the Constitution of the United States. By failing or refusing to decide or give due recognition to these federal questions and these claims of federal constitutional rights the Supreme Court of Illinois denied to these petitioners their day in court, deprived them of their property without due process of law, and denied them the equal protection of the law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

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* For example, at one point in its opinion (R. 72), the Court said of the judgments that they "should never have been entered, because of the reasons set out in *Leviton* v. *Board of Education*." Furthermore, in the companion case in this Court, *Hutchinson* v. *Board*, #332, the Court dismissed the appeal of the Board as moot on the ground that the questions presented—whether the claims and judgments were corporate obligations—had been determined in the *Leviton* cases.

To say merely that the decrees will not be enforced because to enforce them will compel the respondents to violate the Constitution of Illinois, is merely another way of saying the decrees are erroneous and were the result of a mistake of law and hurdles (not decides), all the federal questions presented by petitioners. The fact that the State Constitution is brought into the case is a red herring. If the claims are invalid the fact that their invalidity is predicated on the State Constitution is immaterial. They would be just as invalid if the reason for invalidity was a provision of statute or a rule of the common law. If the judgment is conclusive in the one case it must likewise be conclusive in the other.

If, as petitioners contend, and as the Illinois decisions without exception hold, the decrees conclusively settle the validity of the claims, that they are not subject to examination by any court on any ground other than the jurisdiction of the Court which entered them, and that therefore the decrees are corporate obligations, then enforcement of those decrees does not require acts in violation of the Constitution of Illinois or in violation of any other law. *Drainage Com'rs.* v. *Rector Drainage Dist.*, 266 Ill. 536, 540, 107 N. E. 895, 897; *People* v. *Cairo*, 50 Ill. 154, 165; *People* v. *L. & N. R. Co.*, 350 Ill. 274, 278, 183 N. E. 233, 235; *People* v. *Village of Bradley*, 367 Ill. 301, 305, 11 N. E. (2d) 415, 418. And it would be no defense to a denial of rights guaranteed by the Fourteenth Amendment to the Constitution of the United States if it did. *C. B. & Q. R. Co.* v. *Chicago*, 166 U. S. 226, 229; *McCullough* v. *Virginia*, 172 U. S. 102, 123; *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S. 421, 431.

C.

None of the authorities cited in the opinion of the Supreme Court of Illinois, and in respondents' answer, supports the right of the Court to inquire into the claims adjudicated by the judgments. The truth is that the decisions relied upon are authorities holding to the contrary and serve conclusively to demonstrate that the non-federal grounds of decision advanced by the Supreme Court of Illinois are at odds with every decided case in the books, are untenable, illusory and unsubstantial.

The soundness of the contention of respondents made at pages 21 and 22 of their answer, that the non-federal grounds of decision advanced by the Supreme Court of Illinois are tenable, adequate and substantial, is predicated upon seven decisions of this Court, a decision of the Supreme Court of California, and a decision of the Supreme Court of Georgia. *Huddleston* v. *Dwyer*, 321 U. S. 88; *Brownsville* v. *Loague*, 129 U. S. 493, 503, 505; *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 292, 293; *Freeland* v. *Williams*, 131 U. S. 405, 419, 420; *Louisiana* v. *Mayor, etc. of New Orleans*, 109 U. S. 285, 289; *Ward* v. *Joslin*, 186 U. S. 142, 152; *United States* v. *County of Macon*, 99 U. S. 582; *Smith* v. *Broderick*, 107 Cal. 644, 653-654, 40 Pac. 1033; *Brunson* v. *Caskie*, 127 Ga. 501, 502, 503, 86 S. E. 621. An examination of these cases reveals that they not only do not support the proposition for which they are advanced by respondents and for which they were cited in the opinion of the Supreme Court of Illinois, but that each, when properly analyzed, is to the extent it is at all applicable to the case at bar an authority supporting the contentions advanced by these petitioners.

Huddleston v. Dwyer.

At pages 20 to 22 of their answer respondents contend that the question of whether or not a State Court may in a mandamus proceeding brought to enforce a judgment against a municipal corporation inquire into the validity of the claim adjudicated by the judgment and refuse to enforce the judgment in the event it is of the opinion that such claim is not a valid claim against the municipal corporation is purely a question of state law.

In support of this proposition respondents cite (Ans., pp. 20-21) the recent opinion of this Court in *Huddleston* v. *Dwyer*, 321 U. S. 88. That case supports neither the decision of the Supreme Court of Illinois nor the position taken by respondents in their answer. The proceeding was not a suit on a judgment but a direct appeal to the United States Circuit Court of Appeals. Furthermore, neither party was asserting any claims or rights under the Constitution of the United States nor were there any federal constitutional questions presented. The case was one which would have been required to be commenced in the State of Oklahoma had it not been for the existence of diversity of citizenship between the parties. The rights of the parties, both procedural and substantive, depended exclusively on the law of the State of Oklahoma. Unlike the case at bar the judgment involved in that case was, as this Court pointed out, *sub judice*. The case is authority only for the now well settled proposition that where a case in the federal courts involves only questions of state law and no federal questions are presented on the merits, the Federal Court must ascertain and apply the state law as that law may appear from time to time during the entire period the proceeding in the Federal Court remains *sub judice*.

Brownsville v. Loague.

The next case cited in support of the contention that the Supreme Court of Illinois had power to examine into the claims adjudicated by the decrees is *Brownsville* v. *Loague*, 129 U. S. 493. This case does not hold, as respondents state, that a court may, in a proceeding brought to enforce a final judgment entered by a court of competent jurisdiction against a municipal corporation, go behind that judgment and determine whether the claim adjudicated by the decree was a valid corporate obligation of such corporation. In that case judgment had been obtained on bonds issued by a municipal corporation after the authorizing statute, which was the only source of authority for the issuance of the bonds and the levying of taxes to pay the bonds, had been repealed. At the time the judgment was obtained there was no authority, statutory or otherwise, for the levy of taxes or the application of funds for the payment of any judgments whatsoever. Consequently, as stated by this Court (Opinion, p. 496), petitioner alleged that his "only remedy to enforce the collection of his judgments is that awarded by the Act authorizing the issue of the bonds * * *." This Court then held that having been thus invited by the judgment holder to go behind the judgments to the bond authorization act for the only claimed authority to levy taxes to pay the judgment, it must of necessity inquire whether or not the obligation for the payment of which the statute authorized taxes to be levied actually existed. Therefore, since the bonds had been issued after the authorizing statute had been repealed, this Court necessarily held that the condition which would bring into effect the special taxing power relied on by the judgment holder did not exist. Where, as in the case at bar, the judgment holder relies alone upon the judgment for process to enforce it against the corporation, the normal and universal

rule which has obtained in this Court and in the courts of Illinois since their inception (until the instant decision), is that the judgment is conclusive of the validity of the claim as a corporate obligation of the municipal corporation and of its power and duty to bring about payment of the judgment by any means afforded to such municipal corporation under the law for payment of judgments generally. See authorities, Pet., pp. 32, 42.

This Court in *Franklin County* v. *German Bank*, 142 U. S. 93, 100, explained *Brownsville* v. *Loague* on the foregoing grounds. After discussing its decision in *Brownsville* v. *Loague*, this Court stated (142 U. S. 101) that it knew of no case holding that the effect of a final judgment, when offered in evidence in a distinct and collateral action, to be anything other than conclusive of all questions within the issues of the judgment proceeding.

Among many other authorities likewise explaining *Brownsville* v. *Loague* are *City of Mohall* v. *First Nat. Bank*, 105 Fed. (2d) 315, 317; *Equitable Investment Trust Co.* v. *Board of Commissioners*, 86 Kans. 708, 121 Pac. 1097, 1098; and case note in 9 L. R. A. (N. S.) 1002, 1006.

In view of the apparent contention of respondents that inquiry into the validity of the claim upon which the judgment is based may be made if evidence of the nature of the claim appears on the face of the record, a further holding of this Court in *Franklin County* v. *German Bank* on this question is pertinent. One of the contentions made by the municipal corporation in that case was that the bonds upon which judgment had been entered were invalid, were not corporate obligations of the municipal corporations, and that, since this fact appeared upon the face of the record on appeal, the court had power to inquire into that issue. In holding otherwise, this Court said (142 U. S. 100), "But we know of no case which goes to the

extent of holding that where a court having complete jurisdiction of the case has pronounced a decree upon a certain issue, such issue may be retried in a collateral action, even although the evidence upon which the case is heard is sent up with the record."

It may be well to observe in this connection that in so far as the conclusive effect of the judgment as an adjudication of the claim is concerned, any recital by the Court of the ground upon which it entered the decrees is not only immaterial, but likewise is not binding upon the party who obtained the judgment. As long as the subject matter of the suit is within the jurisdiction of the court the judgment itself is conclusive of the liability of the party against whom it is entered, irrespective of the reasons which might have been given by the court for its adjudication, and whether the Court was right or wrong. *Langnes* v. *Green*, 282 U. S. 531, 534-535. The fact the Court entering judgment states a particular ground of its own for so doing, cannot alter the actual theory or basis of claim asserted in the pleadings of the successful party. Even on direct review of a judgment a party may support the judgment upon any grounds, even to the extent of advancing grounds at variance with those advanced by the Court. *Langnes* v. *Green*, 282 U. S. 531, 538-539; *United States* v. *American Ry. Exp. Co.*, 265 U. S. 425, 435.

United States v. County of Macon.

United States v. *County of Macon*, 99 U. S. 582 (Pet. pp. 27-28) presented issues substantially identical with those involved in *Brownsville* v. *Loague*, and is distinguishable on the same grounds. In that case railroad construction bonds were issued by Macon County, Mo., pursuant to a Missouri bond statute which authorized a special tax of 1/20 of 1 per cent to be levied for the purpose of paying

such bonds. The county also had authority under other statutes to levy taxes at the rate of ½ of 1 per cent for general corporate purposes. Bonds issued under the statute were not paid and judgment was obtained on the bonds against the county. It appeared that the revenue produced by the special tax was insufficient, even when augmented by any surplus of tax collections levied for general purposes, to pay either the bonds or the judgments rendered thereon.*

The holders of the judgments sought to compel the county by a writ of mandamus to levy a new tax in addition to the general and special tax levies authorized by statute. There was no statute in existence which authorized the levy of any taxes in addition to those above mentioned. This Court held (99 U. S. 591) that it had no power to bring into existence and to compel exercise by the county of a power of taxation for which there was no statutory or other authority under the law. This Court remarked that "We cannot create new rights or confer new powers. All we can do is to bring existing powers into operation."

Contrary to the assertion made by respondents in their answer (pp. 27-28) this Court did not inquire into the validity of the claim upon which the judgment was based or regard the judgment as other than conclusive of the issue of the liability of the municipal corporation upon the claim which the judgment had adjudicated against it.

When viewed in the light of the limited issue presented to and determined by this Court in that case it clearly ap-

* Prior to the decision of this Court in the *Macon* case, it had been held by this Court in *United States* v. *Clark*, 96 U. S. 215, 217, that holders of such bonds were entitled to judgment against the county upon the unpaid bonds and to compel payment of the judgment, not only from the proceeds of collection of the special tax levy, but also from any surplus of general funds remaining in the treasury of the municipal corporation after payment of current general expenses and obligations.

pears that the limited portion of this Court's opinion quoted at page 28 of respondents' petition has a meaning other than that which respondents seek to attribute to it.

That this Court did not intend to hold the proposition which respondents seek to attribute to this Court appears from this Court's discussion of the case in its subsequent decision in *Ralls County* v. *United States*, 105 U. S. 733. That case was a proceeding to enforce payment against Ralls County, Mo., of judgments obtained against it on railroad construction bonds similar to those involved in the *County of Macon* case. The judgment creditor sought mandamus to compel the county to levy taxes in addition to the special tax and to the general tax for corporate purposes. He relied for authority in this regard upon a Missouri statute which conferred power on the County Court and directed it to take all necessary action with respect to levying taxes to protect the credit of the county. This Court sustained the contentions of the judgment creditor in this regard and held that he was entitled to a writ of mandamus as prayed. The county urged in defense the same language from the opinion in the *County of Macon* case which is quoted and relied upon by respondents in the case at bar. In disposing of that contention this Court said, (105 U. S. 738) "The language there used may be broader than on further consideration we should be willing to agree to. That case is authority on this point only to the extent it was necessary then to decide."

Reported *sub nom* in the *Ralls* case is the case of *Lincoln County Court* v. *United States*, 105 U. S. 739. That case was on the facts identical in all respects with the *Ralls County* case *but the municipal corporation asserted as an additional ground of defense to the issuance of writ of mandamus* that the bonds upon which judgment had been obtained were not the corporate obligation of the county because they had been delivered after a registration statute had come into effect and compliance had not been had

with that statute. This Court disposed summarily of this contention by remarking that "In our opinion this is a defense that cannot be taken advantage of after judgment. As has been said in the *Ralls County* case, it was conclusively settled by the judgment, which this is a proceeding to carry into execution, that the coupons sued on were binding obligations of the county * * * and as such are entitled to payment out of any fund that can lawfully be created for that purpose."

Obviously, if the *County of Macon* case, which was relied upon by the defendant municipal corporation in both the *Ralls County* and *Lincoln County Court* cases, was a case holding to the decision sought to be attributed thereto by respondents in the case at bar, this Court would have been required to refuse enforcement of the judgments involved in those cases. The *County of Macon* case is similarly distinguished in other opinions of this Court. *Knox County Court* v. *United States ex rel. Harshman*, 102 U. S. 229, *Quincy* v. *Jackson*, 113 U. S. 332, 338, and *Franklin County* v. *German Bank*, 142 U. S. 93, 100-101.*

* In the *Franklin County* case this Court, in rejecting the contention of the defendant county that, under the authority of *Brownsville* v. *Loague*, 129 U. S. 493, and *United States* v. *County of Macon*, 99 U. S. 582, this Court had the right to inquire into the question of whether or not the claim upon which the judgment against the county sought to be enforced in that case was the corporate obligation of the county, and if not, then to refuse enforcement of the judgment, said:

> "But we know of no case which goes to the extent of holding that where a court having complete jurisdiction of the case has pronounced a decree upon a certain issue, such issue may be retried in a collateral action, even though the evidence upon which the case is heard is sent up with the record."

And further (p. 101):

> "Had the plaintiff county desired further to test the validity of these bonds, it was its duly to have appealed from this decree, * * * when the question of the validity of both issues could have been heard and determined by this Court."

It is respectfully submitted that the decision of this Court in *United States* v. *County of Macon*, 99 U. S. 582, when considered in the light of the foregoing authorities and in the light of the limited issue presented in that case, not only is not authority for the proposition which respondents advance, but, so far as the case is applicable to any issue at bar, is authority in support of the contentions of these petitioners. Petitioners ask that their judgments be included in the annual appropriation ordinance and budget of the Board of Education and that provision be made for payment thereof by levy of taxes or sale of bonds, as authorized by statute. No levy of a special tax is sought. Petitioners seek merely to compel the Board of Education to take all steps necessary to exercise powers admittedly conferred upon it for the raising of funds for the payment of its corprate obligations, including judgments. As appears from the foregoing cases, petitioners are entitled to this relief.

Freeland v. Williams.

Freeland v. *Williams*, 131 U. S. 405, did not involve a collateral attack upon a judgment, but rather merely the question whether a new right of review granted by the West Virginia constitution, violated any provision of the Fourteenth Amendment. Respondents err when they say of this case that "The question presented to this Court required *going behind* the judgment to ascertain whether or not it was of such a character as was unenforceable under the new State Constitution." This Court did not go behind the judgment for any purpose. It merely examined the judgment to ascertain whether it was within the class of judgments of which the West Virginia Constitution authorized a new remedy for review. Upon adjudging this question in the affirmative this Court then held that the Virginia courts had power to *review* the judg-

ment. It is for this proposition that the *Freeland* case has been cited by this Court as authority. *Stephens* v. *Cherokee Nations*, 174 U. S. 445, 478; *Wallace* v. *Adams*, 204 U. S. 415, 422; *Johannessen* v. *United States*, 225 U. S. 227, 241. This Court pointed out that the State constitutional provision for new review merely remedied a defect in normal process and did not create a new process. (131 U. S. 419.) The proceeding being one for direct review of the judgment, this Court further held that it was proper, as in all other cases of direct review of judgments, to inquire into the validity and merits of the claim which had been adjudicated by the judgment.

At no time since the entry of the money decrees in favor of petitioners or since the expiration of the time within which respondents could have sought review of those decrees has the Illinois Constitution been amended or has any statute been enacted awarding to respondents a new remedy for review. It is patent, therefore, that the special situation present in the *Freeland* v. *Williams* case, is not presented in the case at bar. That decision is in no way authority for the proposition now relied upon by respondents. It is to be pointed out that this Court throughout its opinion indicated that in the absence of the new remedy for review the normal rule of conclusiveness of a final judgment would have obtained.

Wisconsin v. Pelican Insurance Co.

The next case cited by respondents is *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265. Respondents rely upon and quote a portion of the opinion, but fail to call attention to the fact that in the subsequent case of *Fauntleroy* v. *Lum*, 210 U. S. 230, 236, this Court held not only that the quoted portion of the opinion was a *dictum* but that it did not have the meaning now sought to be attributed to it by respond-

ents. In the *Pelican Insurance Co.* case this Court held merely that it did not have original jurisdiction of an action commenced in this Court by the State of Wisconsin upon a judgment for a penalty recovered by that State in one of its courts. This Court pointed out that the attempt of the State of Wisconsin to enforce the judgment in question was merely one of the steps in the course of its attempt to enforce a penalty and that this Court did not, therefore, have jurisdiction. It is clear that the quotation from the opinion of this Court appearing at pages 24-25 of respondents' answer, when viewed in the light of the narrow issue before the court, does not support the proposition for which the case is advanced by respondents. As stated above, this Court so held in *Fauntleroy* v. *Lum*, 210 U. S. 230, 236.

The *Fauntleroy* case was a suit brought in the State of Mississippi to enforce a judgment entered by a Missouri Court. The judgment was an adjudication against defendant of an alleged cause of action which arose in Mississippi out of a gambling transaction in cotton futures. By the laws of Mississippi the claim upon which the Missouri judgment was based was illegal and void. The Mississippi courts held that the Missouri judgment could not be enforced in the courts of Mississippi because the claim upon which it was based was an invalid claim under the laws of Mississippi. The case was brought to this Court on federal constitutional grounds raised in the Mississippi courts. It was contended, on the basis of the portion of the opinion of this Court in *Wisconsin* v. *Pelican Insurance Co.*, quoted at pages 24-25 of respondents' answer, that this Court had announced an exception to the general rule that a final judgment entered by a court of competent jurisdiction is conclusive of the claim and of all issues and defenses which were or which could have been adjudicated by such judgment. In rejecting this contention this Court said, through

Mr. Justice Holmes, (210 U. S. 236,) that the only issue in *Wisconsin* v. *Pelican Insurance Co.* was the narrow one whether this Court had original jurisdiction of the action and that, even if the court had reached a different conclusion in that case as to its jurisdiction, "it would not have and could not have decided anything relevant to the question before us." The court further remarked that "It is true that language was used which has been treated as meaning that the original claim upon which a judgment is based may be looked into further than Chief Justice Marshall supposed. But evidently it meant only to justify the conclusion reached upon the specific point decided, for the proviso was inserted that a court 'cannot go behind the judgment for the purpose of examining into the validity of the claim'. 127 U. S. 293. However, the whole passage was only a *dictum* and it is not worth while to spend much time on it."* A like explanation of the decision of this Court in *Wisconsin* v. *Pelican Insurance Co.* is to be found in *Carpenter* v. *Beal-M'Donnell & Co.*, 222 Fed. 453, 458.

* The court then concluded, (210 U. S. 237,) "* * * Whether the award would or would not have been conclusive, and whether the ruling of the Missouri Court upon that matter was right or wrong, there can be no question but that the judgment was conclusive in Missouri on the validity of the cause of action. A judgment is conclusive as to all the *media concludendi*, *United States* v. *California and Oregon Land Co.*, 192 U. S. 355; and it needs no authority to show that it cannot be impeached *either in or out of the state* by showing that it was based upon a mistake of law. Of course a want of jurisdiction over either the person or the subject matter might be shown. But as the jurisdiction of the Missouri court is not open to dispute the judgment cannot be impeached in Mississippi even if it went upon a misapprehension of the Mississippi law. We feel no apprehensions that painful or humiliating consequences will follow upon our decision. No court would give judgment for a plaintiff unless it believed that the facts were a cause of action by the law determining their effect. * * *" (Emphasis added.)

Fauntleroy v. *Lum* has been frequently cited with approval by this Court for the proposition held by it through Mr. Justice Holmes, the last time in *Milliken* v. *Meyer*, 311 U. S. 457, 462, where this Court said that the conclusiveness of a judgment of a court of general jurisdiction "precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based."

Louisiana v. Mayor of New Orleans.

The next case relied upon by respondents is *Louisiana* v. *Mayor, etc. of New Orleans*, 109 U. S. 285, 289. As appears from the statement of the case in respondents' answer (p. 25) this Court did not make inquiry into the validity of the claim upon which the judgment there involved was based. The *sole* question before the Court was whether the curtailment by state legislation of the taxing power of the municipal corporation against which the particular tort judgment sought to be enforced in that case had been entered was an impairment of the obligation of contract. This Court held merely that a tort judgment was not a contract within the meaning of the clause of the Federal Constitution protecting contracts from impairment by state legislation. No such question is involved in the case at bar. It is to be noted that Mr. Justice Bradley in a specially concurring opinion (109 U. S. 291) said that judgments against municipal corporations, based on purely private rights were "as much an article of property as anything else that a party owns;" and that to abrogate the remedy for enforcing such a judgment, without affording other adequate remedy in its stead, would be "to deprive the owner of its property within the meaning of the Fourteenth Amendment", that "the remedy for enforcing a judgment is the life of a judgment just as much as the remedy for

enforcing a contract is the life of a contract", and that for this reason it was important clearly to distinguish between the kind of judgment under consideration in *Louisiana* v. *Mayor of New Orleans*, "and other judgments for claims based upon the absolute right of the party."

Ward v. Joslin.

It clearly appears from the statement of *Ward* v. *Joslin*, 186 U. S. 142, 152, at page 25 of respondents' answer that this Court was neither called upon to nor did it inquire into the validity of the claim adjudicated by the judgment involved in that case. The action was not one against the judgment debtor to enforce the judgment against it. Rather, it was one brought against a stockholder of the judgment debtor, who was not a party to the judgment proceedings, to enforce the judgment against such stockholder on the theory that the judgment was a debt or "dues" of the corporation for which the defendant stockholder was liable under a stockholders' double liability statute making stockholders in the type of corporations involved in that suit liable to the amount of their stock for "dues" due from such corporation. The issue whether or not the judgment was a "dues" within the meaning of the stockholders' double liability statute was not a matter in issue in the judgment proceeding and the inquiry of this Court on that question was, therefore, not an inquiry into any issue which was or which could have been adjudicated by the judgment. This Court pointed out, (186 U. S. 153,) that the case was merely one in which the party seeking enforcement of the judgment was required to and did go to a source other than the judgment for the remedy he sought to invoke to his advantage against the defendant.

Smith v. Broderick.

Smith v. *Broderick*, 107 Cal. 644, 40 Pac. 1033, 1035, involved a provision of the California Constitution prohibiting a municipal corporation from incurring indebtedness beyond the revenue provided in any one year for the payment of debts of the character sought to be incurred. A city, in violation of this provision of the California Constitution, incurred obligations in excess of the revenues for that particular year. Thereafter, suit was brought upon the claims and the defendant city by formal resolution consented to the entry of judgment against it. The resolution itself was filed in the suit and judgment was entered upon the consent by default. Thereafter the City Auditor refused to approve the judgment for payment and the judgment creditor filed a mandamus proceeding against the city and the auditor to enforce the judgment. The Court held that under these circumstances it had the right to inquire into the question of the validity of the claims upon which the judgment was based.

The judgment, having been entered by consent, was not a judicial determination of the issue of the liability of the city upon the claims in question and the rules respecting the inviolability against collateral attack of final judgments entered by courts of competent jurisdiction did not apply. On this ground alone the case is clearly distinguishable from that at bar.

It appears from *Johnson* v. *Sacramento County*, 65 Cal. 481, 4 Pac. 463, that the California Court, in *Smith* v. *Broderick*, would not have inquired into the basis of the claim upon which the judgment involved in that case was entered had the issue of the liability of the city upon the claim been adjudicated against it in a contested proceeding. In the *Sacramento County* case the defendant

county attempted to attack a judgment sought to be enforced against it in a collateral proceeding on the ground that the claim adjudicated by the judgment was an indebtedness incurred in violation of the foregoing provisions of the California Constitution prohibiting the incurring of obligations for current expenses beyond the income for the current year. The Court held that this was properly an issue which was or could have been presented in the judgment proceeding, that the judgment was conclusive of the liability of the county, and that the county would not be permitted in the collateral proceeding to show that the claim was one which the county was prohibited from incurring under the California Constitution. The decision has been cited with approval in subsequent opinions of the California Supreme Court.

Another ground of distinction of the *Smith* v. *Broderick* case is that the judgment creditor in that case was not seeking an accounting of funds actually received by the municipal corporation to his own use or from which the claim was properly payable in the first place, but rather was seeking to establish the general liability of the city on the original claims, so as to enable him to reach other assets of the city. *Smith* v. *Broderick* would be somewhat like the case at bar if the petitioners had sued on their tax anticipation warrants and had recovered a judgment against the Board of Education for the full amount of the principal and interest due on such warrants according to their terms. However, admittedly, that is not this case. These judgments were limited to the proceeds of tax collections actually received by the Board to the use of petitioners.

Brunson v. Caskie.

Brunson v. *Caskie*, 127 Ga. 501, 56 S. E. 621, was an action against a county for damages suffered by plaintiff as the result of a defective roadway which had been negligently maintained by the county authorities. The Georgia Constitution limited the power of counties to levy taxes to certain purposes which did not include either the payment of judgments generally or the payment of damages caused by defective roadways. The county having refused to pay the judgment, mandamus was brought to compel the issuance by the county of a warrant on the County Treasurer for the payment of the judgment. Citing *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, and *United States* v. *County of Macon*, 99 U. S. 582*, the Georgia Court held, (56 S. E. 622,) that "Putting the alleged claim into judgment gives the plaintiff no new rights, *in respect to the means of payment*, which did not exist before the judgment was obtained." (Emphasis added.) This is merely another case such as *Brownsville* v. *Loague***. Since there was no power under the Georgia Constitution by which the county could levy taxes for the payment of judgments generally, it was necessary for the judgment creditor to attempt enforcement of his judgment by process not contained in the judgment itself. Consequently, as this Court held in *Brownsville* v. *Loague*, 129 U. S. 493, it was in turn necessary for the court to inquire into the nature of the claim adjudicated by the judgment to see whether or not, independent of the judgment, it was of a character for the payment of which taxes were authorized to be levied by the Georgia Constitution.

The case is ably discussed and distinguished on these

* Discussed at pages 30-34 and 35-38 of this reply.

** See pages 28 to 30 of this reply. *Brownsville* v. *Loague*, 129 U. S. 493.

grounds by the Supreme Court of Kansas in *Equitable Investment Trust Co.* v. *Board of Commissioners*, 86 Kans. 708, 121 Pac. 1097, 1098. That case involved a judgment against a county based upon a claim which the court recognized was not a corporate liability of the county. The Court held that while it was true that the claim was not a valid one, still it had "sufficient plausibility to challenge the attention of the court" which entered it; that this was enough to vest that court with jurisdiction; and that the judgment was conclusive of the question of the obligation of the county on the claim and of the duty of the county to pay the judgment. Counsel for the county contended, (as do respondents at bar,) that inasmuch as it appeared from the record of the judgment that the claim asserted imposed "no liability whatever on the county" no aid should be given to enforce the judgment. *Brunson* v. *Caskie* and also *Brownsville* v. *Loague* were cited in support of the county's position. The Kansas Supreme Court distinguished both cases on the grounds above discussed* and concluded with the comment that "The difficulty with this reasoning is that it denies the conclusive effect of the judgment. It conflicts with the proposition that the judgment decides the law as well as the facts, and determines that county is liable to the plaintiff."

The Kansas Supreme Court pointed out that the quasi municipal corporation involved in that case had power to levy taxes or to apply general revenues to the payment of judgments generally and that this fact alone distinguished the case from *Brunson* v. *Caskie*. This ground of distinction likewise applies in the case at bar. By Section 135½ of the School Act the Board of Education is authorized and required to include in its annual appropriation ordinance such sums of money as may be required to defray all

* See pp. 42, 28-30 for discussion of *Brownsville* v. *Loague*.

necessary expenses of said Board to be paid or incurred during the fiscal year, including "all final judgments" and to levy taxes for the purpose of paying the items included in such annual appropriation ordinance. (Ill. Stats., 1943, ch. 122, par. 158a.) In addition, the Board is authorized by the Act of June 12, 1937 (Appendix, pp. 31-32) to issue bonds "to pay judgment indebtedness based upon order or decree of any court of record heretofore or hereafter entered" except judgments rendered for money due upon unpaid claims for services rendered, for supplies or for materials. It is submitted, therefore, that the limited doctrine of *Brunson* v. *Caskie* has no application in the case at bar.

The distinctions above pointed out and elaborated upon by the Supreme Court of Kansas in the *Equitable Investment Trust* case, (121 Pac. 1097, 1098,) as well as other grounds of distinction, are discussed at length in the case note in 9 L. R. A. (N. S.) 1002.

Furthermore, even assuming that *Brunson* v. *Caskie* is authority for the point for which that case is cited by respondents, such a holding would be squarely contrary to the decisions of the Supreme Court of Illinois in *Moore* v. *Town of Browning*, 373 Ill. 583, 585, 586, 588, 27 N. E. (2d) 533, 535, 536; *People* v. *L. & N. R. Co.*, 350 Ill. 274, 277, 183 N. E. 233, 235; *Marabia* v. *Thompson Hospital*, 309 Ill. 147, 157, 140 N. E. 836, and *Carney* v. *Village of Marseilles*, 136 Ill. 401, 407, 26 N. E. 491, 493, and to the decision of the Appellate Court of Illinois in *Seither & Cherry Co.* v. *Board of Education*, 283 Ill. App. 392, 403.

We respectfully submit that it appears from the foregoing analysis of the cases relied upon by respondents that none of those cases is authority for the proposition that the court in a mandamus proceeding brought against a municipal corporation to enforce a judgment against the

corporation may inquire into the question whether the claim adjudicated by the judgment is one which the corporation could have incurred in the first instance by virtue of the Illinois Constitution or by virtue of a statute or a rule of law. Nor are they authority for the proposition that a court may enforce or refuse to enforce a judgment against a municipal corporation, depending upon the view of the court as to whether the liability could or could not have been incurred in the first instance.

The authorities cited by respondents support the opposite of this proposition. Therefore, the Supreme Court of Illinois, in disposing of the case at bar on this ground, placed its decision upon a non-federal ground which was wholly untenable and without merit.

We respectfully submit that this case falls within the rule frequently announced by this Court: that the Fourteenth Amendment assures to the citizen the privilege of having his federal constitutional rights and immunities judicially declared and protected when properly invoked and this Court has the province to inquire whether the decision of the State court rests upon a fair and substantial basis or one merely illusory and plainly untenable. *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282; *Ward* v. *Love County*, 253 U. S. 17, 22.

II.

Second Alleged Adequate Non-Federal Ground of Decision Alleged Presents Inadequacy of Funds.

At pages 28-29 of their answer respondents assert that the added ground of decision of the Supreme Court of Illinois sustaining the defense of the Board of Education of the present insufficiency of funds available to it, over and above moneys allegedly already appropriated for payment

of other liabilities and current expenses, to pay the money decrees of petitioners, is an adequate, tenable and independent non-federal ground of decision which rendered it unnecessary for the Supreme Court of Illinois to determine the federal questions raised.

In their mandamus proceeding these petitioners prayed for the issuance of a writ of mandamus commanding the Board and its officers to do every act and thing imposed upon them by law to bring about the payment of the several money decrees and, among the courses open to the Board of Education to this end, to include the judgments in its annual budget and appropriation ordinance as expressly authorized by statute and levy taxes to raise funds to meet the budgeted items, including the judgments; or to issue bonds under the authority of the Act of July 12, 1937 (Appendix to Pet., p. 31) to raise funds for the payment of the judgments; or that such other and further or different relief be granted as the nature and exigencies of the case should require.

The mere formal defense advanced by the Board in its answer that all funds available to it at the time it filed its answer had been budgeted and appropriated by it to the payment of liabilities and current expenses exclusive of the judgments, goes to but part of the relief prayed in the petition and does not, even if properly sustainable (which it is not) serve as an adequate, independent basis for disposition of the entire case.

It was within the jurisdiction and discretion of the Supreme Court of Illinois to fix such terms in the granting of the writ of mandamus as would enable the Board of Education to meet its obligations to these judgment creditors without interfering with its obligation to maintain the public schools. Pet., pp. 50-51; *East St. Louis* v. *Amy*, 120 U. S. 602; *United States* v. *City of Key West* (C. C. A. 5th),

78 Fed. 88, 93-94. But when the Court refused to award any writ whatsoever to petitioners and held they could not be enforced by any means it deprived them of the only remedies they had for enforcing their decrees against the Board of Education, destroyed the value of their decrees, and as a consequence deprived them of their property in their decrees without due process of law in violation of the Fourteenth Amendment. The disposition of the case made by the Supreme Court of Illinois was not a mere temporary withholding of the remedy of these petitioners but was a permanent denial to them of one of their remedies to enforce the payment of the decrees. Unless the decision of the Supreme Court of Illinois is reversed the decrees of these petitioners are mere scraps of paper.

Aside from these considerations the mere formal allegation of the Board in its answer in the mandamus proceeding of want of present funds is not, under the applicable law in Illinois, a sufficient defense. The Illinois authorities require that a formal allegation of want of funds must be supported by specific averments of fact from which the adequacy of the defense of want of funds will appear. *City of Chicago* v. *People*, 215 Ill. 235, 237; *People* v. *City of Chicago*, 378 Ill. 479, 484-485. In the first of these cases the Supreme Court of Illinois said: "When a petition for a writ of mandamus is filed, the answer of the respondent must state positive and definite facts upon which it relies in defense. The conclusions of the pleader are not sufficient, and if the answer consists merely of general statements and conclusions the relief will be granted." None of the authorities cited at page 29 of respondents' answer to the petition are at variance with the foregoing decisions of the Supreme Court of Illinois. Each of the cases relied upon by respondents was a case in which it appeared, either from proper allegations of altimate fact set forth in the answer of the municipality or from the evidence

adduced in the trial, that no funds whatsoever were available or could be made available by taxation to discharge the obligation sought to be enforced.

III.

Attempt of Respondents to Distinguish the Authorities Relied Upon by Petitioners.

At pages 29-35 of their answer respondents attempt to distinguish *some* of the authorities cited to this Court in the petition.

It is first asserted as a general ground of distinction of all the authorities cited by these petitioners that in none did the defendant municipality have power to create the debt or obligation adjudicated by the judgment, or to levy taxes for its payment.

It is a sufficient answer to this contention to say that not only is this distinction one wholly untenable and without merit, but that in several of the cases relied on by petitioners the claim adjudicated by the judgment was one which the municipal corporation had no power to incur in the first instance. *Moore* v. *Town of Browning*, 373 Ill. 583, 585, 586, 588, 27 N. E. (2d) 533, 535, 536; *People* v. *L. & N. R. R. Co.*, 350 Ill. 274, 277, 278, 183 N. E. 233, 235; *Town of Lyons* v. *Cooledge*, 89 Ill. 529, 534. This is likewise true of other authorities relied upon by petitioners in the Supreme Court of Illinois and with respect to which that Court made the same erroneous comment now sought to be applied by respondents to additional authorities relied upon by petitioners. (See cases set forth in opinion of Supreme Court of Illinois at R. 74.) Petitioners in their petition for rehearing called attention to this misstatement of the Court and to the fact that the authorities cited by petitioners to which the Court referred were cases

in which the claims adjudicated by the judgments were ones which had been incurred after the defendant municipal corporation had reached its constitutional debt limit and that therefore they were cases involving adjudications against various municipal corporations of claims which they had no power to incur in the first instance.

It is noteworthy that the Supreme Court of Illinois cited no case and the respondents have referred this Court to no case which supports any such distinction as has been advanced.

It will further unduly lengthen this reply to discuss in detail the erroneous grounds advanced by respondents for distinguishing other cases relied upon by petitioners. Each of the cases cited to this Court in the petition is authority for the particular point for which it is cited. Respondents in attempting to distinguish petitioners' cases have either erroneously stated the holdings in those cases or erroneously attributed to petitioners the advancement of those cases for points other than those for which they were actually cited by petitioners. We shall undertake discussion of but two instances which are typical of others appearing in respondents' answer.

For example, at page 33, respondents attempt to distinguish *Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721, on the ground that this Court held in that case "that a court has a right to examine the judgment pleaded in the mandamus proceeding for the purpose of determining *whether the municipality had the right originally to create the debt.*" The fact is that this Court held to the contrary of this proposition.

In that case plaintiff had obtained judgment upon certain warrants issued by defendant for building a bridge. The warrants were payable from a special tax fund for a particular year and from surplus general funds for speci-

fied years. The warrants not being paid, plaintiff obtained a general judgment against defendant. Pursuant to an existing statute the judgment directed defendant to levy sufficient taxes to pay the judgment. The judgment was not paid nor the taxes levied. Suit was commenced by plaintiff for writ of mandamus to compel the special tax levy to be made. In the meantime the statute authorizing the special tax was repealed. The plaintiff contended such repeal violated the impairment of the obligation of contract provision of the Constitution of the United States.

The defendant municipality contended the judgment was open for inquiry (1) as to whether the claim adjudicated was a valid obligation of the municipality, and (2) whether the judgment could be enforced at all since the original claim was payable from special tax funds no longer in existence.

This Court held that because of the issue raised by plaintiff of impairment of the obligation of contract the Court had to inquire whether the court which entered the judgment regarded it as one entered on a contract. It appearing that the court which entered the judgment had so regarded plaintiff's claim, this Court then went on to say, in answer to the contention of defendant that the validity of the claim as a corporate obligation of the municipality was also open to inquiry (111 U. S. 721): "The inquiry, however, which may be thus instituted into the nature of the original cause of action, does not, where the judgment was rendered upon a contract, *authorize a re-examination of the validity of the contract, or the propriety of the judgment*: That would involve a retrial of the case." (Emphasis added.)

The Supreme Court of Louisiana had sustained the second defense,—that the funds from which the original claim was payable being no longer in existence, the municipality

could not be required to levy new taxes to pay the judgment. This Court held that this question was likewise finally adjudicated by the judgment and was not a subject open for inquiry, saying in this regard (111 U. S. 721): "The absolute liability of the parish upon such warrants was therefore no longer an open question, and the inquiry whether the judgment was founded upon a contract was answered. Further testimony on the subject was irrelevant and incompetent. The Supreme Court, however, held that the designation of the funds out of which the warrants were to be paid rendered the parish liable only if the funds were sufficient, notwithstanding the terms of the judgment. *Its conclusion in this respect was wholly unauthorized, because founded upon evidence which it could not legitimately consider.* The judgment being absolute, and the plaintiff therein being by law entitled at the time to a decree that the assessing and collecting officers of the parish should assess and collect a tax sufficient to pay it, and such decree having been entered, and those officers having failed in their duty, the relator was entitled to the writ prayed." (Emphasis added.)

The other example is *Drainage District* v. *Highway Com'rs.*, 238 Ill. 521. Respondents state as a ground for distinguishing this case that the Supreme Court of Illinois "examined the judgment to determine whether or not the obligation on which said judgment was based was a valid one." The fact is the Court did exactly the contrary. The case involved a mandamus judgment issued by a county court, which in Illinois is a court of limited jurisdiction, which directed the levy of certain special assessments confirmed under a judgment of confirmation previously entered by the county court. The jurisdiction of the county court was attacked because certain prerequisites of jurisdiction of the court to enter the confirmation judgment did not appear on the face of the judgment record, *as re-*

quired by statute. The Supreme Court of Illinois held that the judgment of a court of limited jurisdiction was subject to attack where the requisites of the court's jurisdiction did not appear on the face of the record. But the court also held that had the requisite jurisdictional facts been recited in the judgment record, "such finding, like any other judicial determination, cannot be contradicted, varied or explained." (238 Ill. 524.)

Conclusion.

We respectfully submit that respondents have not advanced in their answer a single argument or a single case militating in any way against the propositions urged by petitioners in their petition for writ of certiorari. The answer serves to point up and emphasize the fact that all of the propositions advanced by petitioners in their petition are sound, are fully supported by decisions of this Court and other courts of highest authority cited in the petition, and that for the reasons advanced in the petition the Supreme Court of Illinois has by its decision in this case and in the companion cases deprived these petitioners of their property without due process of law and has denied to petitioners the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States, and has either denied or failed to give due recognition to substantial rights of petitioners claimed under the Constitution of the United States. The alleged non-federal grounds of decision upon which the Supreme Court of Illinois placed its decision of the rights claimed by these petitioners are supported by no authorities whatsoever. Every case urged by respondents in support of the grounds of decision establish their complete lack of merit and substantiate fully the position of these petitioners that the non-

federal grounds of decision are illusory, untenable and unsubstantial.

Aside from this fact the non-federal grounds of decision, irrespective of their merit, are not such as to permit the Supreme Court to pass upon the merits of the litigation and the rights of petitioners, without passing upon the claims of petitioners under the Constitution of the United States. The answer serves to emphasize not only that this case involves substantial federal questions of importance which merit decision by this Court, but also that petitioners are entitled to the judgment of this Court as to whether the federal rights claimed by them were denied or not given due recognition by the Supreme Court of Illinois.

Respectfully submitted,

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Of Counsel.

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 330

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. RECONSTRUCTION FINANCE CORPORATION, ETC., AND 210 OTHER RELATORS,

Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,

Respondents.

PETITION FOR RECONSIDERATION OF PETITION FOR WRIT OF CERTIORARI.

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THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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PETITION FOR RECONSIDERATION OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable The Supreme Court of The United States:

The People of the State of Illinois, on the relation of Reconstruction Finance Corporation, a corporation of the United States of America created by Act of Congress, and 210 other judgment creditors of the Board of Education of the City of Chicago, Illinois, a body politic and corporate, relators in a certain mandamus proceeding commenced in the Circuit Court of Cook County, Illinois, respectfully pray that this Honorable Court reconsider the petition for writ of certiorari and the briefs in support thereof, that it set aside its order of October 9, 1944,

denying said petition, and that it award the writ of certiorari as prayed in said petition.

By their answer to the petition respondents did not challenge, and so it must be assumed that they concede, that

(1) rights and interests under the Constitution of the United States were duly claimed and plainly asserted by petitioners in the state courts, as set forth in the petition at pages 6 to 9;

(2) the federal constitutional questions presented and the constitutional rights claimed were substantial, as presented in the petition at pages 12 to 16 and in the brief at pages 31 to 38; and

(3) the claims of rights and interests under the federal Constitution urged by petitioners were not decided or given due recognition by the Supreme Court of Illinois, as pointed out in the petition at pages 6, 7-8 and 16 and in the brief at pages 28-29, and 39-46.

Respondents' contention that the petition for writ of certiorari should be denied rests solely on the argument that the Supreme Court of Illinois decided the case on non-federal grounds adequate to sustain its judgment, independent of federal constitutional questions. These petitioners are not advised of the grounds on which this Honorable Court denied the petition, and so they must assume that this Court reached the conclusion, in line with the answer of respondents, that (a) the non-federal grounds upon which the Supreme Court of Illinois placed its decision are tenable and substantial, and (b) that the rights and interests of petitioners can be adjudicated without a decision of the federal constitutional questions which were plainly asserted by petitioners.

We think we have demonstrated in our reply to the answer that the opposition of respondents to the granting

of the petition rests on contentions as untenable as the arguments the Supreme Court of Illinois used to evade deciding the real issues in this case. If the non-federal grounds upon which the Supreme Court of Illinois placed its decision are unsound and unsubstantial, or if the rights and interests of petitioners cannot be adjudicated without a decision of the federal constitutional questions asserted by petitioners, then the right to a review by this Court is clear under its decisions. *Ward* v. *Love County*, 253 U. S. 17, 22; *Kansas City Southern Ry.* v. *Albers Commission Co.*, 223 U. S. 573, 591-594; *Rogers* v. *Alabama*, 192 U. S. 226, 230.

In *Ward* v. *Love County* the defendant quasi-municipal corporation challenged the jurisdiction of this Court on the ground that the State Supreme Court had put its judgment entirely on independent non-federal grounds which were broad enough to sustain the judgment without reference to the constitutional questions presented. In disposing of this question, this Court said (253 U. S. 22-23):

> "The right to the exemption was a federal right, and was specially set up and claimed as such in the petition. *Whether the right was denied, or not given due recognition, by the Supreme Court is a question as to which the claimants were entitled to invoke our judgment, and this they have done in the appropriate way.* It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without any fair or substantial support. Of course, if non-federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided. With this qualification, it is true that a judgment of a state court, which is put on independent non-federal grounds broad enough to sustain it, cannot be reviewed

by us. *But the qualification is a material one and cannot be disregarded without neglecting or renouncing a jurisdiction conferred by law and designed to protect and maintain the supremacy of the Constitution and the laws made in pursuance thereof.*" Emphasis supplied.

We respectfully suggest that whether the non-federal grounds upon which the Supreme Court of Illinois based its decision are tenable and substantial and whether the rights and interests of petitioners can be adjudicated without a decision of federal constitutional questions asserted by petitioners, are in themselves substantial federal questions which should move this Court to exercise its judicial discretion to bring the case up for review. *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282; *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 678, 682; *Broad River Power Co.* v. *South Carolina*, 281 U. S. 537, 540; *C. B. & Q. Ry.* v. *Drainage Comrs.*, 200 U. S. 561, 580.

A federal constitutional question squarely presented by this record, which has not been settled by a decision of this Court, is whether a final judgment is property protected by the Fourteenth Amendment and whether a denial of the writ of mandamus to enforce the judgment deprives the holder of his property in his judgment without due process of law. This point is presented at pages 9 and 12 of the petition, page 31 of the brief, and pages 21, 23, 25 and 44-45 of the reply. Petitioners submit that the rule prohibiting inquiry into the merits of their decrees (*Milliken* v. *Meyer*, 311 U. S. 457, 462; *Fauntleroy* v. *Lum*, 210 U. S. 230, 236; *Franklin County* v. *German Bank*, 142 U. S. 93, 100; *Lincoln County Court* v. *United States*, 105 U. S. 739; *Cooper* v. *Reynolds*, 77 U. S. 308, 310), is one of the attributes of the decrees which they asserted could not be impaired without denying the protection of their property rights afforded them by the Fourteenth Amend-

ment and that that claim has not been decided. The Supreme Court of Illinois disregarded this attribute of the decrees and reexamined the issues settled by the decrees without giving any consideration to the question whether this action deprived these petitioners of their property in their decrees without due process of law. Since the question, presented by this record, whether a final judgment entered by a state court of general jurisdiction is property protected by the Fourteenth Amendment is open in this Court, these petitioners are entitled to the judgment of this Court on that question.

The refusal of the Supreme Court of Illinois to decide the federal constitutional questions presented was just as much a denial of petitioners' rights under the Constitution of the United States as if it had decided the questions erroneously. *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282; *Chapman* v. *Goodnow's Admr.*, 123 U. S. 540, 548.

In *Lawrence* v. *State Tax Commission* the State Supreme Court placed its decision on non-federal grounds and declined to decide the claims under the Constitution of the United States, but this Court held that it had jurisdiction to review the case to determine whether the grounds of decision of the State Supreme Court were broad enough to support the judgment without a decision of the federal constitutional questions, saying (286 U. S. 282):

> "*But the Constitution, which guarantees rights and immunities to the citizen, likewise insures to him the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked.* Even though the claimed constitutional protection be denied on non-federal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus avoided. Upon one

> of the alternative assumptions made by the court, that the amendment is discriminatory, appellant's constitutional rights were infringed when the tax was levied upon him, and state officers acting under the amendment refrained from assessing the like tax upon his corporate competitors. If the Constitution exacts a uniform application of this tax on appellant and his competitors, *his constitutional rights are denied as well by the refusal of the state court to decide the question, as by an erroneous decision of it*, for in either case the inequality complained of is left undisturbed by the state court whose jurisdiction to remove it was rightly invoked." Emphasis supplied.

The money of these petitioners in the treasury of the Board of Education was appropriated by the Board to purposes other than payment of tax anticipation warrants held by petitioners, notwithstanding the Board by the warrants (R. 15-17, No. 331, *Lewis* v. *Board*) had pledged these moneys to the payment of the warrants and had contracted with petitioners pursuant to statute (Sec. 132, School Act, App. to Petition, p. 29) to set aside the proceeds of collections of the anticipated and assigned taxes and hold them for the payment of the warrants. (Reply to Answer, pp. 9-11.) These petitioners sought an accounting in regular equity proceedings in the courts of Cook County, Illinois, and obtained decrees against the Board of Education ordering the Board to pay to them the moneys belonging to them and no one else, which the Board had actually received into its treasury to their use and had not paid over to them. (R. 9-19, 23, 26, 31, 41, 44, 45, 47, 49; Petitioners' Brief, pp. 22-26.) When these decrees were not paid, petitioners sought by mandamus to compel payment of the decrees, (R. 1-39,) and this remedy was denied to them by the Circuit Court of Cook County, Illinois (R. 63) and by the Supreme Court of Illinois. R. 65-76.

By the judgment of the Supreme Court of Illinois petitioners are deprived not only of their property in their decrees without due process of law, in violation of the Fourteenth Amendment, but of their money which the Board of Education took from them and gave to others in the first instance. Reply to Answer, pp. 9-19.

A mere statement of the facts makes it crystal clear that these petitioners have had their money taken from them and given to others by direct action of agencies of the State of Illinois and that they have been denied any compensation for the property taken. These petitioners are the victims of a chain of events which they could not foresee when they purchased the tax anticipation warrants, duly issued for its benefit by the Board of Education in 1929, and which occurred after they bought the warrants. Once having invested their money in a security payable from a limited fund, these petitioners' fortunes were in the hands of the public authorities and they had no control over the extension and collection of the taxes levied and the distribution of the proceeds of such collections received into the treasury of the Board of Education to their use. See analysis of applicable statutes in petition for rehearing in *Lewis* v. *Board*. R. 252-254.

When the Board of Education issued its tax anticipation warrants in 1929 pursuant to statutory authority, the assessed value of property in the school district was $4,250,437,799, (R. 166, No. 331, *Lewis* v. *Board*,) and the warrants issued amounted to less than seventy-five per cent of the taxes levied. (R. 186, No. 332, *Hutchinson* v. *Board*.) If the taxes had been extended, as then contemplated by the Board of Education and the purchasers of its tax anticipation warrants, and put in collection in normal course, enough moneys would have been collected to pay the warrants in full. (R. 53-54, No. 332, *Hutchinson* v. *Board*.)

Nearly two years after the warrants were sold, the State Tax Commission of Illinois reassessed the real estate in Cook County, Illinois, and reduced the assessed valuation of the property in the school district $555,939,093, and the reassessment delayed for the same period the extension of 1929 taxes. (R. 166, No. 331, *Lewis* v. *Board.*) When the taxes were extended in 1931, it was evident that enough taxes could not be collected to pay the warrants in full. (R. 167, No. 331, *Lewis* v. *Board.*) The tax anticipation warrants were payable only out of the proceeds of collections of the taxes against which they were issued, (Sec. 132, School Act, App. to Petition, p. 29; warrant provisions, R. 15-17, No. 331, *Lewis* v. *Board.*) and when it appeared to the Board of Education that the limited fund would not be sufficient to pay the warrants in full, the proceeds of collections pledged to the payment of the warrants and received by the Board into its treasury should have been prorated among all the holders. (App. to Petition, pp. 22-28; *Norfolk & Western Ry. Co.* v. *Board of Education*, 14 Fed. Supp. 475, aff. 88 Fed. (2nd) 462, reaff. 114 Fed. (2nd) 859; *Rothschild* v. *Village of Calumet Park*, 350 Ill. 330, 339, 342, 183 N. E. 337, 341-342.) This was not done. The Board paid some of the warrants in full and left those held by petitioners unpaid. R. 25, 54, 134, No. 332, *Hutchinson* v. *Board.*

It is difficult to conceive a case where it is more clear that the property of one has been taken by public authority and given to another. (Brief, pp. 32-36; Reply, pp. 9-11.) This Court has repeatedly held that this constitutes depriving a person of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. *Ward* v. *Love County*, 253 U. S. 17, 24; *C. St. P. M. & O. Ry. Co.* v. *Holmberg*, 282 U. S. 162, 167; *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 78-80.

We desire to make it clear, if there is any doubt on the point in the mind of this Court, that petitioners in their accounting suits asked only for money which belonged to them and to no one else and that the accounting decrees gave them only their prorata shares of the proceeds of tax collections actually received by the Board of Education into its treasury to their use. ((Petitioners' Brief, pp. 39-40; Reply Brief, pp. 9-11.) They have never contended that the Board was under obligation to pay their warrants according to their terms, as the Supreme Court of Illinois assumed. See Petition for Rehearing in Supreme Court of Illinois in this case, R. 81-82, 83, and in *Lewis* v. *Board*, No. 331, R. 249-281, where the point is fully discussed under Division I, pp. 2 to 10 of the petition.

The judgment of the Supreme Court of Illinois does not rest on substantial non-federal grounds. Petitioners' Brief, pp. 46-51; Reply Brief, pp. 19-25, 45-48.

The mere assertion of the Supreme Court of Illinois that it had power to inquire into whether or not the claims adjudicated in the accounting suit were corporate obligations of the Board and to grant or deny enforcement of the decrees depending upon its decision of that question, is not an adequate non-federal ground of decision which rendered it unnecessary to pass on federal constitutional questions presented. Assuming that the Supreme Court of Illinois had the right, in the face of petitioners' claims under the Constitution, to inquire into the validity of the claims adjudicated by the decrees, (which it did not, Brief, p. 31,) that Court could not have determined the claims adjudicated without determining the rights and interests of petitioners under the Constitution of the United States plainly claimed and strongly asserted by them in the accounting suits to be inherent in the claims adjudicated against the Board. (Reply, pp. 19-25.) When the Board of Education failed to account to peti-

tioners for moneys received by the Board into its treasury to their use, and paid moneys belonging to them over to others, it deprived petitioners of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

In *Ward* v. *Love County*, 253 U. S. 17, certain lands, which by federal law were exempt from taxation, were assessed and the proceeds of collections of taxes were received into the county treasury. Among other defenses the county contended that the taxes were voluntarily paid and could not be recovered and that the tax moneys had been paid over by the county to other municipal bodies and that the county could not be required to compensate the rightful owners for their losses. This case is in many respects like that at bar. The Board of Education received into its treasury moneys admittedly belonging to petitioners and paid these moneys out to others. In ruling against the contentions of Love County, this Court said, quoting from other decisions (p. 24):

> " 'the obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation.' "

As to the case under consideration the Court said (p. 24):

> "To say that the county could collect these unlawful taxes by coercive means and not incur any obligation to pay them back is nothing short of saying that it could take or appropriate the property of these Indian allottees arbitrarily and without due process of law. Of course this would be in contravention of the Fourteenth Amendment, which binds the county as an agency of the State.
>
> "If it be true, as the Supreme Court assumed, that a portion of the taxes was paid over, after collection, to the State and other municipal bodies, we regard it as certain that this did not alter the county's liabil-

ity to the claimants. The county had no right to collect the money, and it took the same with notice that the rights of all who were to share in the taxes were disputed by these claimants and were being contested in the pending suits. In these circumstances it could not lessen its liability by paying over a portion of the money to others whose rights it knew were disputed and were no better than its own. *In legal contemplation it received the money for the use and benefit of the claimants and should respond to them accordingly.*" Emphasis supplied.

When the Supreme Court of Illinois added the makeweight justifying its denial of the writ of mandamus on the ground of present inability of the Board to provide the funds to pay the decrees entered against it in the accounting suits, it had already decided that the decrees were unenforceable against the Board of Education and that petitioners were not entitled to process to collect them. (R. 72, 75.) The Supreme Court of Illinois did not withhold the writ of mandamus because of a temporary situation without prejudice to petitioners to renew their request for a writ at a later period, but it decided that the petitioners are foreclosed now and forever from enforcing the payment of their decrees. Brief, pp. 46-51; Reply, pp. 45-48.

However the rights and interests of petitioners are viewed, it is impossible to adjudicate these rights and interests without deciding the federal constitutional questions asserted by them at every stage of this litigation. The Supreme Court of Illinois failed and refused to pass upon the claims made by petitioners under the Fourteenth Amendment to the Constitution of the United States. (Petition, pp. 6, 7-9, 16; Brief, pp. 51-52. See also Petition for Rehearing in *Leviton* v. *Board* in the Supreme Court of Illinois, which is the ruling case in this litigation, R. 249-281, No. 331, *Lewis* v. *Board*.) Petitioners contend that

their case cannot be decided without passing upon the federal constitutional questions presented. (Petition, pp. 12-18; Brief, pp. 30, 40-41; Reply Brief, pp. 22-24.) These petitioners have been denied their day in court on their claims under the federal Constitution and their only hope of relief lies in a review by this Court. The federal constitutional questions are clearly and aptly presented and are vital and substantial.

Petitioners contend in all earnestness that this is a case which presents questions of such public importance that this Honorable Court should be moved to exercise its judicial discretion to review it, and they humbly pray a reconsideration of their petition for writ of certiorari and the awarding of the writ so that they may have their claims and interests under the Fourteenth Amendment to the Constitution of the United States considered and determined.

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CERTIFICATE OF COUNSEL.

On behalf of all petitioners and their several counsel we certify that the foregoing motion for reconsideration of Petition for Writ of Certiorari is presented in good faith and not for purposes of delay.